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Intellectual Property Department
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MAILED

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OFFICE OF PETITIONS

In re Application of	:	
Ismayil M. Guracar et al.	:	
Application No. 09/657,635	:	DECISION ON PETITION
Filed: September 6, 2000	:	
Attorney Docket No. 2000P82261 US	:	

This is a decision on the petition, filed June 9, 2003 and re-filed on September 22, 2003, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application or in the alternative, as a petition under 37 CFR 1.137(b) to revive the above identified application as abandoned unintentionally.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

As to the petition under 37 CFR 1.181:

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely pay the issue and publication fees on or before November 12, 2002, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed August 12, 2002.

Petitioner asserts that the Notice dated August 12, 2002 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and
3. a copy of the docket record where the non-received Notice would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy all of the above-stated requirements. In this regard, items 2 and 3 have not been provided.

Accordingly, absent the required evidence to establish non-receipt of the Notice of August 12, 2002, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

As to the petition under 37 CFR 1.137(b):

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510, the publication fee of $300, (2) the petition fee of $1,620 ; and (3) a proper statement of unintentional delay.

The fees noted above have been charged to petitioner's deposit account.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is not a correct reading of the statement appearing in the petition.

The application is being referred to the Office of Data Management.

Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions